

SENATE BILL No. 20 With Provisions for Tiered Facilities

K.S.A. 66-1802 Definitions as used in this act:

(a) “Damage” means any impact or contact with an underground facility, its appurtenances or its protective coating, or any weakening of the support for the facility or protective housing which requires repair.

(b) “Emergency” means any condition constituting a clear and present danger to life, health or property, or a customer service outage.

(c) “Excavation” means any operation in which earth, rock or other material below the surface is moved or otherwise displaced by any means, except tilling the soil for normal agricultural purposes, or railroad or road and ditch maintenance that does not change the existing railroad grade, road grade and/or ditch flowline, or operations related to exploration and production of crude oil or natural gas, or both.

(d) “Excavator” means any person who engages directly in excavation activities within the state of Kansas, but shall not include any occupant of a dwelling who:

- (1) Uses such dwelling as a primary residence; and
- (2) excavates on the premises of such dwelling.

(e) Facility” means *any sanitary sewer or* underground line, system or structure used for transporting, gathering, storing, conveying, transmitting or distributing *potable water*, gas, electricity, communication, crude oil, refined or processed petroleum, petroleum products or hazardous liquids; Tier 1 facility shall not include, any *stormwater sewers or* production petroleum lead lines, salt water disposal lines or injection lines, which are not located on platted land or inside the corporate limits of any city.

(f) “Locatable facility” means facilities for which the tolerance zone can be determined by the operator using generally accepted practices such as as-built construction drawings, system maps, probes, locator devices or any other type of proven technology for locating.

(g) “Marking” means the use of stakes, paint, flags or other clearly identifiable materials to show the field location of underground facilities, in accordance with the rules and regulations promulgated by the state corporation commission in the administration and enforcement of this act.

(h) “Municipality” means any city, county, municipal corporation, public district or public authority located in whole or in part within this state which provides firefighting, law enforcement, ambulance, emergency medical or other emergency services.

(i) “Notification center” means the statewide communication system operated by an organization which has as one of its purposes to receive and record notification of planned excavation in the state from excavators and to disseminate such notification of planned excavation to operators who are members and participants.

(j) “Operator” means any person who owns or operates an underground Tier 1 or Tier2 facility, except for any person who is the owner of real property wherein is located underground facilities for the purpose of furnishing services or materials only to such person or occupants of such property.

(k) “Preengineered project” means a public project or a project which is approved by a public agency wherein the public agency responsible for the project, as part of its engineering and contract procedures, holds a meeting prior to the commencement of any construction work on such project in which all persons, determined by the public agency to have underground facilities located within the construction area of the project, are invited to attend and given an opportunity to verify or inform the public agency of the location of their underground facilities, if any, within the construction area and where the location of all known and underground facilities are duly located or noted on the engineering drawing as specifications for the project.

(l) “Permitted project” means a project where a permit for the work to be performed must be issued by a city, county, state or federal agency and, as a prerequisite to receiving such permit, the applicant must locate all underground facilities in the area of the work and in the vicinity of the excavation and notify each owner of such underground facilities.

(m) “Person” means any individual, partnership, corporation, association, franchise holder, state, city, county or any governmental subdivision or instrumentality of a state and its employees, agents or legal representatives.

(n) “Production petroleum lead line” means an underground facility used for production, gathering or processing on the lease or unit, or for delivery of hydrocarbon gas and/or liquids to an associated tank battery, separator or sales facility. Production petroleum lead lines shall include underground lines associated with lease fuel and saltwater disposal and injection.

(o) “Platted land” means a tract or parcel of land which has been subdivided into lots of less than five acres for the purpose of building developments, including housing developments, and for which a surveyor’s plat has been filed of record in the office of the register of deeds in the county where the land is located.

“Tier 1 facility” means an underground facility used for transporting, gathering, storing, conveying, transmitting or distributing gas, electricity, communication, crude oil, refined or reprocessed petroleum, petroleum products or hazardous liquids.

“Tier 2 facility” means an underground facility used for transporting, gathering, storing, convey, transmitting or distributing potable water or sanitary sewage that has elected to not be considered a Tier 1 facility for purposes of notification by the notification center.

(p) “Tolerance zone” means the area within 24 inches of the outside dimensions in all horizontal directions of an underground facility, ~~*except that the tolerance zone for a sanitary sewer facility or a potable water facility shall be established by rules and regulations adopted under K.S.A. 2006 Supp. 66-1815, and amendments thereto.*~~

(q) “Update” means an additional request from the excavator to extend the time period of the request for intent to excavate beyond the 15 calendar day duration of the request.

(r) “Whitelining” means the act of marking by the excavator the route or boundary of the proposed excavation site with white paint, white stakes or white flags.

(s) “Working day” means every day Monday through Friday beginning at 12:01 a.m., except for the following officially recognized holidays: New Year’s day, Memorial day, Independence day, Labor day, Thanksgiving day, the day after Thanksgiving and Christmas.

Statute 66-1803: Excavator's duty to ascertain location of facilities.

An excavator shall not engage in excavation near the location of any underground facility without first having ascertained, in the manner prescribed in this act, a location of all underground facilities in the proposed area of the excavation.

Statute 66-1804 Notice of intent of excavation.

(a) Except in the case of an emergency, an excavator shall serve notice of intent of excavation at least two full working days, but not more than 15 calendar days before the scheduled excavation start date, on each operator *of Tier 1* ~~having underground~~ facilities located in the proposed area of excavation.

(b) Except in the case of an emergency, an excavator may serve notice of intent of excavation at least two full working days, but not more than 15 calendar days before the scheduled excavation start date, on each operator of Tier 2 having underground facilities located in the proposed area of excavation.

(b) The notice of intent to excavate or any subsequent updates shall be valid for 15 calendar days after the excavation start date and such notice shall only describe an area in which the proposed excavation reasonably can be completed within the 15 calendar days.

(c) No person shall make repeated requests for remarking unless the request is due to circumstances not reasonably within the control of such person.

(d) The notice of intent of excavation shall contain the name, address and telephone number of the person filing the notice of intent, the name of the excavator, the date the excavation activity is to commence and the type of excavation being planned. The notice shall also contain the specific location of the excavation.

(e) The person filing the notice of intent to excavate shall, at the request of the operator, whetline the proposed excavation site when the description of the excavation location cannot be described with sufficient detail to enable the operator to ascertain the location of the proposed excavation.

(f) The provisions of this section shall not apply to a preengineered project or a permitted project, except that the excavators shall be required to give notification in accordance with this section prior to starting such project.

66-1805 is hereby amended to read as follows: 66-1805. Notification center.

(a) This act recognizes the establishment of a single notification center for the state of Kansas. ~~The notification center shall provide prompt notice to each affected member of any proposed excavation.~~ Each operator who has an underground facility shall become a member of the notification center.

(b) The notification center shall provide prompt notice of any proposed excavation to each affected operator of Tier 1 facilities that has facilities recorded with the notification center in the area of a proposed excavation site.

(c) The notification center shall provide the excavator with the name and contact information of each operator of Tier 2 facilities that has facilities recorded with the notification center in the area of the proposed excavation.

~~(b)~~(d) Notification, as required by K.S.A. 2001 Supp. 66-1804, and amendments thereto, to operators *of Tier 1 facilities* shall be given by notifying the notification center by telephone at the toll free number or by other communication methods approved by the notification center. The content of such notification shall be as required by K.S.A. 2001 Supp. 66-1804, and amendments thereto.

(e) Notification, as required by K.S.A. 2001 Supp. 66-1804, and amendments thereto, to operators of Tier 2 facilities may be given by notifying the operator of Tier 2 facilities using the contact information provided by the notification center. The content of such notification shall be as required by K.S.A. 2001 Supp. 66-1804, and amendments thereto.

~~(e)~~(f) Each operator who has an underground facility within the state shall be afforded the opportunity to become a member of the notification center on the same terms as the original members.

~~(d)~~(g) A suitable record shall be maintained by the notification center to document the receipt of notices from excavators as required by this act.

(h) A suitable record shall be maintained by the operators of Tier 2 facilities to document the receipt of notices from excavators as required by this act.

Statute 66-1806

Identification of location of facilities; duties of operator; liability for damages.

(a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.

(b) If the operator of Tier 2 facilities cannot accurately mark the tolerance zone, such operator shall mark the approximate location to the best of its ability, notify the excavator that the markings may not be accurate, and provide additional guidance to the excavator in locating the facilities as needed during the excavation.

(c) The operator of Tier 2 facilities shall not be required to provide notification of the tolerance zone for facilities which are at a depth at least two feet deeper than the excavator plans to excavate but does have to notify the excavator of their existence.

~~(b)~~(d) If the operator has no underground facilities in the area of the proposed excavation, such operator, before the excavation start date, shall notify the excavator that it has no facilities in the area of proposed excavation by telephone, facsimile, marking the area all clear or by other technology that may be developed for such purposes.

~~(e)~~(e) If the excavator notifies the notification center, within two working days after the initial identification of the tolerance zone by the operator, that the identifiers have been improperly removed or altered, the operator shall make a reasonable effort to reidentify the tolerance zone within one working day after the operator receives actual notice from the notification center.

~~(d)~~(f) *If the excavator has provided notice to the operator pursuant to 66-1804 and the operator notifies the excavator that it has no underground facilities in the area of the planned excavation, fails to respond or improperly marks the tolerance zone for the facilities as required in paragraphs (a), (b), or (c) of this section, the excavator may proceed and shall not be liable to the operator for any direct or indirect damages resulting from contact with the operator's facilities, except that nothing in this act shall be construed to hold any excavator harmless from liability to the operator in those cases of gross negligence or willful and wanton conduct.*

With regard to Tier 2 facilities....

~~(e)~~(f) For economic damages in any civil court of this state, failure of an operator to inform the excavator within two working days of the tolerance zone of the

underground facilities of the operator in the manner required by subsection (a) of K.S.A. 2001 Supp. 66- 1806, and amendments thereto, shall not give rise to a cause of action on the part of the excavator against an operator, except that nothing in this act shall be construed to hold any operator harmless from liability in those cases of inaccurate marking of the tolerance zone, gross negligence or willful and wanton conduct. Such failure may subject an operator to civil penalties as determined by the state corporation commission.

~~(f)~~(g) Any person claiming that an operator has failed to inform the excavator within two working days of the tolerance zone of the underground facilities of the operator shall file a complaint with the state corporation commission requesting enforcement of subsection (a) within one year of becoming aware of the violation.

(g) All *Tier 1* facilities installed by an operator after January 1, 2003, shall be locatable.

(h) All Tier 2 facilities installed by an operator after January 1, 2008, shall be locatable.

Statute 66-1807: Emergency excavations.

(a) In the case of an emergency which involves danger to life, health or property or which requires immediate correction in order to continue the operation of an industrial plant or to assure the continuity of public utility service, excavation, maintenance or repairs may be made without using explosives, if notice and advice thereof, whether in writing or otherwise are given to the operator or notification center as soon as reasonably possible.

(b) If an operator receives a request to locate its facilities for an emergency condition, such operator shall make a reasonable effort to identify the location of its facility within two hours of receiving notification or before excavation is scheduled to begin, whichever is later.

(c) Any person providing a misrepresentation of an emergency excavation may be subject to the penalties set out in K.S.A. 2001 Supp. 66-1812, and amendments thereto.

Statute 66-1808: Application of other laws.

This act shall not be construed to authorize, affect or impair local ordinances, resolutions or other provisions of law concerning excavating or tunneling in a public street or highway or private or public easement.

Statute 66-1809: Excavator's duty to exercise reasonable care.

(a) Upon receiving information as provided in K.S.A. 2001 Supp. 68-1806, and amendments thereto, an excavator shall exercise such reasonable care as may be necessary for the protection of any underground facility in and near the construction area when working in close proximity to any such underground facility.

(b) An excavator using a trenchless excavation technique shall meet minimum operating guidelines as prescribed in rules and regulations developed and adopted by the state corporation commission in support of this act.

Statute 66-1810: Contact with or damage to facility; procedure.

When any contact with or damage to any underground facility occurs, the operator shall be informed immediately by the excavator. Upon receiving such notice, the operator immediately shall dispatch personnel to the location to provide necessary temporary or permanent repair of the damage. If the protective covering of an electrical line is penetrated or dangerous gases or fluids are escaping from a broken line, the excavator immediately shall inform emergency personnel of the municipality in which such electrical short or broken line is located and take any other action as may be reasonably necessary to protect persons and property and to minimize hazards until arrival of the operator's personnel or emergency first responders.

Statute 66-1811

Effect of violation of act, liability for damages; application of other laws.

(a) In a civil action in a court of this state when it is shown by competent evidence that personal injury, death or other damages, including damage to any underground facilities, occurred as a result of a violation of this act, there shall be a rebuttable presumption of negligence on the part of the violator.

(b) In no event shall the excavator be responsible for any damage to underground facilities if such damage was caused by the failure of the operator to correctly and properly mark the location of the tolerance zone of the damaged facility.

(c) Nothing in this act is intended to limit or modify the provisions of:

- (1) K.S.A. 60-258a, and amendments thereto; or
- (2) the national electrical safety code, which would otherwise be applicable.

Statute 66-1812

Violation of act, civil penalties and injunctive relief.

Any person to whom this act applies, who violates any of the provisions contained in this act, shall be subject to civil penalties and injunctive relief as set out in K.S.A. 66-1,151, and amendments thereto, and any remedies established in rules and regulations promulgated by the state corporation commission in support of

this act.

Statute 66-1813

Administration and enforcement by corporation commission.

This act shall be administered and enforced by the state corporation commission of the state of Kansas. *History: L. 1993, ch. 217, S. 13; July 1.*

Statute 66-1814

Severability.

If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.